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MEMORANDUM:

DATE: February 23, 1981

SUBJECT: Source Applicability Under the Interpretative Ruling

FROM: Director,
Division of Stationary Enforcement

TO: Carl C. Kohnert, Jr, Acting Director
Enforcement Division, Region IX

This is in response to your memorandum of December 30, 1980, in which you requested an applicability determination under the Emission Offset Interpretative Ruling.

Kernridge Oil Company submitted an application on June 27, 1979 for the installation of 15 steam generators. Under the January 16, 1979 Interpretative Ruling, in effect at the time of permit application, Kernridge was not required to install LAER or obtain offsets for CO because the project would be located in a "clean pocket" of a designated nonattainment area and its impact on the actual nonattainment area was determined to be insignificant for that pollutant. A problem has arisen because Kernridge has not yet received the necessary permits. The Region reconsidered what would be necessary in the way of particulate offsets (the area is also nonattainment for TSP), ultimately requiring stack rather than haul-road offsets. This reconsideration required considerable investigation and time and changes in local regulations. The process has just now been completed. Because a permit has not yet been issued and because the Offset Policy has been revised in the interim to close this "clean spot" exemption, it is unclear to which regulation Kernridge Oil should be subject. This issue is discussed below.

It is DSSE's determination that the project should not be subject to the construction moratorium because a complete application was submitted prior to July 1, 1979. In a January 13, 1981, telephone conversation with Robert Myers of my staff, Don Harvey of your staff confirmed that Region IX told Kernridge Oil that their application was complete prior to the July 1, 1979 date. The construction moratorium only applies if the permit is applied for after the June 30, 1979 deadline. See 44 FR 38471. (July 2, 1979).

There is no justification, however, for not subjecting this project to the requirements of the August 7, 1980 Offset Ruling amendments (45 FR 52741). These amendments do not apply to any major stationary source or major modification that was not subject to the ruling as in effect on January 16, 1979, if the owner or operator:

(A) Obtained all final federal, state and local preconstruction approvals or permits necessary under the applicable SIP before August 7, 1980;

B) Commenced construction within 18 months from August 7, 1980, or any earlier time required under the applicable SIP; and

C) Did not discontinue construction for a period of 18 months or more and completed construction within a reasonable time.

Kernridge was not subject to the January 16, 1979, Offset Ruling because that ruling exempted sources such as Kernridge locating in clean

pockets of designated nonattainment areas (the "clean spot" exemption).

DSSE has discussed the Kernridge situation with the Office of General Counsel (OGC) and the Control Programs Development Division (CPDD) and we all agree that the best option available, assuming the only problem is with the availability of offsets, would be redesignation of the CO nonattainment area. Don Harvey has informed Robert Myers that the area in which Kernridge is located has never been monitored, and was designated nonattainment for CO despite data indicating that only the metropolitan area of Bakersfield exceeded the CO standard. If the part of Kern County where Kernridge is located can be redesignated attainment or unclassified, Kernridge would need to meet only the requirements of EPA's August 7, 1980 Prevention of Significant Deterioration regulations.

Under 40 CFR 52.21(i)(10)(i), published at 45 FR 52739 (August 7, 1980), if Kernridge submits a complete PSD application before June 8, 1981, it would need to meet air quality monitoring provisions of the June 19, 1978 regulations. Additionally, the source may be exempt from any applicable monitoring if it meets the impact level specified at 40 CFR 52.21(i)(8). See FR 52739, August 7, 1980.

This response has been prepared with the concurrence of OGC and CPDD. Please contact Robert Myers at FTS-755-2564 if you have any questions regarding this determination.

Edward E. Reich

cc: Darryl Tyler
Eric Smith
Dave Howekamp
Don Harvey
Mike Trutna
Nancy Mayer

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

DATE: 30 DEC 1980

SUBJECT: Source applicability under the Interpretive Ruling as amended
August 7, 1980

FROM: Clyde B. Eller, Director
Enforcement Division E-1

TO: Ed Reich, Director
Division of Stationary Source Enforcement EN-341

This is to request your determination of the applicability of certain sources to the Interpretive Ruling (IR) as amended on August 7, 1980. The sources in question are those major sources or major modifications that were not subject to the IR as in effect on January 16, 1979 and had submitted a complete application for a NSR permit prior to July 1, 1979. EPA was the permit issuing authority prior to that date in this case. A specific case in point is an application received from Kernridge Oil Company for the installation of fifteen (15) 50 MMBTU/hr steam generators for expansion of their thermally enhanced oil recovery (TEOR) efforts in the Belridge Oil field in Kern County, California. Under the IR in effect at the time Kernridge was not required to install LAER or obtain offsets for CO because the project site would be located in a "clean pocket" of a designated nonattainment area and it's impact on the actual non-attainment area was insignificant. Their complete application was submitted on June 27, 1979. However, due to a request for more information from the Regional Office for additional clarifying information requiring considerable investigation and time by the oil industry in general and changes in local regulations an NSR permit has not yet been issued. Four other applications received from two other oil companies for TEOR projects are also facing similar requirements.

Because the August 7, 1980 amendments eliminated the "clean" pocket exemption, major sources or major modifications locating anywhere in a designated non-attainment area must install LAER and provide offsets. This is an exceptionally critical requirement with regard to CO since all of Kern

County has been designated as non-attainment for CO despite data indicating that only the metropolitan area of Bakersfield exceeds the CO standard. Therefore few CO offsets, if any, are available in the oil fields.

Our review of the IR as amended August 7, 1980 indicates that the following conditions must be met for a major source or modification to be exempt from its requirements:

- 1) The source must have been exempt from the IR in effect on January 16, 1979,
- 2) it must have obtained all final federal, state local preconstruction approvals or SIP required permits before August 7, 1980,
- 3) it commenced construction within 18 months of August 7, 1980 or earlier time required by SIP and,
- 4) it did not discontinue construction for a period of 18 months or more and completed construction within a reasonable time.

However, a comparison with the requirements for Prevention of Significant Deterioration (PSD) as amended August 7, 1980 indicates what appears to be an oversight in the above conditions. This was confirmed in a phone conversation between Mike Trutna, Chief of the New Source Review Section of OAQPS in Durham and my staff on December 22, 1980. The PSD regulations provide an exemption from the substantive review requirements to sources or modifications subject to the PSD regulations in effect on June 19, 1978 but who had submitted their complete applications prior to August 7, 1980 (40 CFR 52.21(i) (9)). This grandfathering clause was proposed on September 5, 1979 and implemented on August 7, 1980 so as to minimize economic dislocation resulting from new federal preconstruction review (see IV. Transition A.1.b. FR 52684).

It appears that EPA's intent was not to subject sources such as those mentioned above to the potentially disrupting requirements of the August 7, 1980 IR if their complete applications were submitted at such an early date. Your earliest concurrence or nonconcurrence in this interpretation would be greatly appreciated.

Should you or your staff have any questions concerning this matter please call me at FTS 556-0102 or Don Harvey at FTS 556-7720.